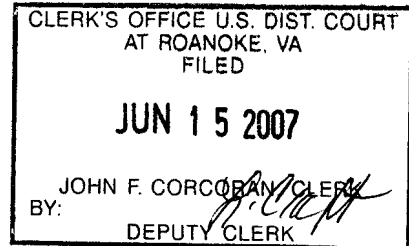


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION



ERICA LYNN SMITH,
Plaintiff,

v.

CAPT. A. RODRIGUEZ, et al.,
Defendants.

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Civil Action No. 7:06-cv-00521

**FINAL ORDER ADOPTING
REPORT AND RECOMMENDATION**

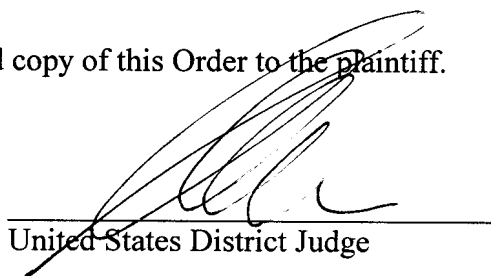
By: Samuel G. Wilson
United States District Judge

Plaintiff Erica Lynn Smith, an inmate proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983, with jurisdiction vested under 28 U.S.C. § 1343. Smith alleges that the defendants violated her constitutional rights by exposing her to environmental tobacco smoke and by denying her requests to be moved to nonsmoking housing. By Order entered December 4, 2006, the court referred the matter to United States Magistrate Judge Michael F. Urbanski for a report and recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge subsequently filed a report, finding that Smith failed to properly exhaust her claims pursuant to 42 U.S.C. § 1997e(a). Neither party has filed objections.

Having reviewed the Magistrate Judge's Report and Recommendation and pertinent portions of the record, the court agrees with the Magistrate Judge's recommendation that the claims be dismissed as unexhausted. Accordingly, the court **ADOPTS** the recommendation, and Smith's claims are **DISMISSED** without prejudice. Defendants' motion is **GRANTED** to the extent that it requests dismissal of the claims and **DISMISSED** to the extent it requests summary judgment. This matter is **STRICKEN** from the active docket of the court.

The Clerk of the Court is directed to send a certified copy of this Order to the plaintiff.

ENTER: This 15th day June, 2007.


United States District Judge